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APPLICATION NO.	FILED DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,211	03/16/2004	Russell C. Blaisdell	RSW920040023US1	2031
25259	7590	04/08/2008		
IBM CORPORATION			EXAMINER	
3039 CORNWALLIS RD.			WILLIAMS, CLAYTON R	
DEPT. T81 / B503, PO BOX 12195			ART UNIT	PAPER NUMBER
REASEARCH TRIANGLE PARK, NC 27709			2157	
			NOTIFICATION DATE	DELIVERY MODE
			04/08/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

RSWIPLAW@us.ibm.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/801,211	<b>Applicant(s)</b> BLAISDELL ET AL.
	<b>Examiner</b> Clayton R. Williams	<b>Art Unit</b> 4152

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 14 January 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-6 is/are pending in the application.

4a) Of the above claim(s)       is/are withdrawn from consideration.

5) Claim(s)       is/are allowed.

6) Claim(s) 1-6 is/are rejected.

7) Claim(s)       is/are objected to.

8) Claim(s)       are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on       is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No.      .
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)

Paper No(s)/Mail Date      

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date      

5) Notice of Informal Patent Application

6) Other:

**DETAILED ACTION**

1. Claims 1-6 are pending in this application.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Lumelsky et al., US 6,463,454 (hereinafter Lumelsky).

For claims 1 and 5, Lumelsky discloses a method suitable for filtering events in an information technology resource monitor (Abstract), comprising the steps of:

    determining a present count of occurrences of an event for a present monitoring period (col. 12, lines 4-8, disclosure of demand analysis module counting object requests);

    comparing the present count with numbers of occurrences of the event in a plurality of earlier monitoring periods (col. 17, lines 32-38 and 43-44, disclosure that historic statistics maintained regarding requests and col. 16, line 65-col. 17, line 6. Inherent in disclosure is comparison of current request(s) against predicted server load and available server capacity. Based on these metrics, controller decides where and how to direct client request);

invoking a first action if the present count exceeds a predetermined proportion of the numbers of occurrences of the event in the plurality of earlier monitoring periods (col. 13, lines 59-67, disclosure that system may undertake a number of courses of action depending on demand and capacity of system at time system receives a request); and

invoking a second action if the present count does not exceed the predetermined proportion of the numbers of occurrences of the event in the plurality of earlier monitoring periods (col. 13, lines 59-67, disclosure that system may undertake a number of courses of action depending on demand and capacity of system at time system receives a request).

For claim 3, Lumelsky discloses the method of claim 1, wherein the second action includes logging the present count without taking further corrective action (col. 13, lines 59-67, disclosure of system's ability to not modify its traffic shaping parameters).

For claim 6, Lumelsky discloses a typicality filter suitable for filtering events in an information technology resource monitor, said filter comprising:

an event counter for determining a present count of occurrences of an event for a present monitoring period (col. 12, lines 4-8, disclosure of demand analysis module counting object requests);

a history table for storing numbers of occurrences of the event in earlier monitoring periods (col. 17, line 1-3, disclosure of system tracking aggregate statistics. History table is a well-known structure in database arts); and

logic for comparing the present count with numbers of occurrences of the event in a plurality of earlier monitoring periods selected from the history table (col. 17, lines 32-38 and 43-44, disclosure that historic statistics maintained regarding requests and col. 16, line 65-col. 17,

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line 6. Inherent in disclosure is comparison of current request(s) against predicted server load and available server capacity. Based on these metrics, controller decides where and how to direct client request), invoking a first action if the present count exceeds a predetermined proportion of the numbers of occurrences of the event in the plurality of earlier monitoring periods (col. 13, lines 59-67), and invoking a second action if the present count does not exceed the predetermined proportion of the numbers of occurrences of the event in the plurality of earlier monitoring periods (col. 13, lines 59-67).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lumelsky, in view of O'Reilly et al., US 6,853,950 (hereinafter O'Reilly).

For claim 2, Lumelsky fails to explicitly disclose the method of claim 1, wherein the predetermined proportion is a majority.

However, O'Reilly teaches a database that determines changes in a tracked subject over time by comparing a current measuring period against a plurality of prior monitoring periods utilizing a weighted moving average (col. 6, lines 19-25).

It would have been obvious to one of ordinary skill in the art to combine the teachings of Lumelsky with the teachings of O'Reilly because this modification provides a database comparator that compares a present count against counts from a plurality of prior monitoring periods utilizing well-known database techniques.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lumelsky, in view of Gales, 2003/0084323 (hereinafter Gales).

For claim 4, Lumelsky fails to explicitly disclose the method of claim 1, wherein the plurality of earlier monitoring periods all begin at the same times on consecutive days previous to the present monitoring period.

However, Gales discloses a system for updating activity profile data in accordance with predefined time periods (col. 22, lines 11-16). Lumelsky and Gales are analogous art because both are from the same field of endeavor of network monitoring.

It would have been obvious to one of ordinary skill in the art to combine the teachings of Lumelsky with the teachings of Gales because this modification provides an internet traffic shaper with time-dependent historic information regarding server load, which is especially relevant for provisioning server capacity to meet anticipated demand.

#### ***Response to Arguments***

Applicant's arguments, filed Jan. 14, 2008, with respect to the rejection(s) of claim(s) 1-3, 5 and 6 under have been fully considered and are persuasive. Therefore, these rejections

have been withdrawn. However, upon further consideration, new grounds of rejection are made in view of Lumelsky and O'Reilly.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clayton R. Williams whose telephone number is 571-270-3801. The examiner can normally be reached on M-F (8 a.m. - 5 p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nabil El-Hady can be reached on 571-272-3963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CRW

/Nabil El-Hady, Ph.D, M.B.A./  
Supervisory Patent Examiner, Art Unit 4152